



June 28, 2002

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2002-3539

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166036.

The Southside Independent School District (the "district") received a written request for a letter of reprimand delivered to a particular teacher. You contend that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, as well as section 552.102 of the Government Code.

Section 552.102(a) of the Government Code is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101 of the Government Code: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). However, employee privacy under section 552.102(a) is less broad than common-law privacy under section 552.101 because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982), 269 (1981), 224 (1979), 169 (1977).

The information at issue pertains solely to the teacher's actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal,

demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here. Consequently, none of the submitted information may be withheld under section 552.102(a).

We next note that the Public Information Act expressly incorporates the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"). Gov't Code § 552.026. Under FERPA, "education records" are those records, files, documents, and other materials which

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). FERPA gives parents the right to inspect the education records of their children. 20 U.S.C. § 1232g(a)(1)(A).

You have informed a member of our staff that the incident that gave rise to the letter of reprimand concerned a student who is the child of the requestor. Although you contend that the letter of reprimand you submitted to this office is made confidential under section 21.355 of the Education Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code, we believe that this record consists of an "education record" for purposes of FERPA because it contains "information directly related to a student." *See* 20 U.S.C. § 1232g(b)(1); *see also* Open Records Decision No. 462 at 15 (1987). Generally, state law is preempted by FERPA to the extent there is a conflict. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Consequently, this office need not reach the issue of whether the letter of reprimand is confidential under section 21.355 of the Education Code. Because the requestor has a special right of access to the letter pursuant to section 20 U.S.C. § 1232g(a)(1)(A), the district in this instance must release to the requestor the letter of reprimand in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/sdk

Ref: ID# 166036

Enc: Submitted documents

c: Mr. Liddo Arriaga
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